



W.A.(MD)No.812 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.07.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A.(MD)No.812 of 2024
and
C.M.P.(MD)No.6030 of 2024**

1.The Principal Secretary to Government,
Highways and Minor Ports (HL 1) Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Director General of Highways,
Highways and Minor Ports Department,
Guindy,
Chennai - 600 025.

... Appellants

Vs.

S.Ovu Reddy

... Respondent

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order passed in W.P.(MD)No.23885 of 2022 dated 04.09.2023 on the file of this Court.



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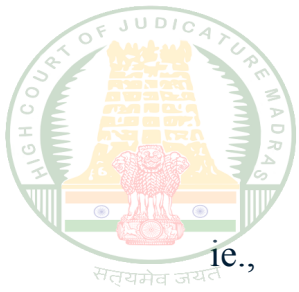
For Appellants : Mr.Veerakathiravan,
Addl. Advocate General,
Assisted by Mr.N.Ramesh Arumugam,
Government Advocate.

For Respondent : Mr.Sricharan Rangarajan, Senior Counsel,
For Mr.P.Mahendran.

JUDGMENT
(By G.R.SWAMINATHAN, J.)

The State is on appeal challenging the order dated 04.09.2023 passed by the learned Single Judge allowing W.P.(MD)No.23885 of 2022 filed by the respondent herein.

2.The respondent herein was working as Assistant Divisional Engineer in the Highways Department. He reached the age of superannuation on 31.03.2015. A day earlier, he was suspended from service vide G.O(3D) No.26 Highways and Minor Ports Department dated 30.03.2015. On 31.03.2015, G.O(3D) No.27 Highways and Minor Ports Department was issued not permitting him to retire. He was retained in service. The reason for such suspension and retention in service was the respondent's involvement in a criminal case



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ie.,

Special Case No.56 of 2011 on the file of Special Court for

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Vigilance and Anti Corruption / Chief Judicial Magistrate, Madurai. On 31.08.2016, the respondent herein was acquitted of all charges leveled against him. Thereafter, he appears to have been requesting the department for revoking his suspension and also permitting him to retire from service with all consequential benefits. Since his representation was not considered, he filed W.P.(MD)No.1235 of 2020. A learned Single Judge of this Court vide order dated 06.02.2020 disposed of the writ petition in the following terms:-

“5.If the submissions of the learned counsel for the petitioner is taken to be true, the action of the respondents suspending him from his service on 13.03.2015 and consequently refusing him to retire from service on 31.03.2015, cannot be appreciated in view of the various orders of this Court as well as the guidelines imposed by the Government in cases, where the respondents seek to pass orders by not permitting the Government employee to retire, on the last day of his service. Incidentally, the petitioner herein was implicated in a criminal case, which was initiated in the year 2008. There was absolutely no impediment on the part of the respondents to have initiated departmental action against the petitioner for his involvement in the criminal case from 2008 onwards and the present action of suspending him and passing the consequential order by



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not permitting him to retire cannot be justified. This court is of the view that atleast now the respondents should take any positive steps to consider the petitioner's case, in view of the order of acquittal passed.

6.In the light of the above observations, the respondent shall consider the petitioner's consideration dated 02.12.2019 and pass appropriate orders atleast within a period of six weeks from the date of receipt of a copy of this order.”

Pursuant to the said direction, the impugned order dated 29.10.2020 came to passed rejecting his request. The government noted that the respondent herein got involved in yet another CBI case on 04.03.2020. The CBI had registered a case against the respondent herein and also arrested him and he was in custody for more than 48 hours. In view of the pendency of the said criminal case and the respondent's arrest and detention in custody for more than 48 hours, his plea for revocation of suspension was rejected. Challenging the said order, the respondent herein filed W.P.(MD)No.23885 of 2025. The learned Single Judge vide order dated 04.09.2023 quashed the orders impugned in the writ petition and allowed the writ petition. Aggrieved by the said order, this writ appeal came to be filed.



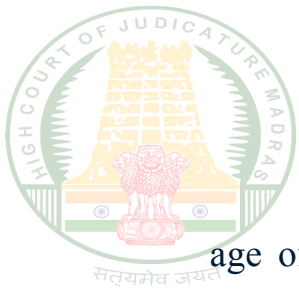
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3.The learned Additional Advocate General strongly emphasized that admittedly, the writ petitioner had not been retired from service and he continued to be under extended period of suspension. Even during the said period, the Conduct Rules would apply and since he is involved in a CBI case and was also arrested and detained, the authority was constrained to reject his request for revocation of the suspension. The learned Additional Advocate General assailed the various reasons assigned by the learned Single Judge for granting relief. He would also add that the decision of Hon'ble Full Bench of this Court reported in **2013 (3) CTC 369 (C.Mathesu Vs. The Secretary to Government, Revenue Department, Chennai – 9)** would not have any application to the facts of this case.

4.Per contra, the learned senior counsel for the writ petitioner submitted that the learned Single Judge was justified in allowing the writ petition and interference with the said order is not called for.

5.We carefully considered the rival contentions and went through the materials on record. As already noted, the writ petitioner reached the



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age of superannuation on 31.03.2015. On 30.03.2015, he was placed under suspension. On 31.03.2015, he was not allowed to retire but retained in service. Paragraph No.1 of G.O(3D) No.26 Highways and Minor Ports Department dated 30.03.2015 reads as follows:-

WHEREAS criminal prosecution has been launched against Thiru S.Ovu Reddy, formerly Assistant Divisional Engineer, now Divisional Engineer National Highways, Madurai for the offences of possession of assets disproportionate to known sources of his income while he was working as Assistant Divisional Engineer, NABARD Sathur and punishable under section 109 of Indian Penal Code read with 13(2) read with 13(1) (e) of the Prevention of Corruption Act, 1988 in the Court of Chief Judicial Magistrate and Special Judge, Madurai in Special C.C. No 2/2008 and the case is pending,

6.The final recital in Paragraph No.1 of G.O(3D) No.27 Highways and Minor Ports Department dated 31.03.2015 reads as follows:-

“NOW, THEREFORE, it is hereby ordered, under sub-rule 56(1)(c) of the Fundamental Rules, that the said Thiru S.Ovu Reddy, formerly Assistant Divisional Engineer, now Divisional Engineer (under suspension) is not permitted to retire on his



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reaching the date of superannuation on the afternoon of 31.03.2015 but retained in service until criminal case launched against him is concluded and final orders passed thereon by the competent authority.”

7. These orders were passed by invoking the power conferred under Rule 56(1)(c) of Fundamental Rules. The said provision reads as under:-

“56.(1) Retirement on Superannuation.— (a) Every Government servant in the superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He shall not be retained in service after that age except with the sanction of the Government on public grounds, which must be recorded in writing but he shall not be retained after the age of sixty years except in very special circumstances:

....

(b) Omitted.

(c) Notwithstanding anything contained in clause (a), a Government servant who is under suspension,

(i) on a charge of misconduct; or

(ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or



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(iii) *against whom an enquiry into grave charges is contemplated or is pending; or*

(iv) *against whom a complaint of criminal offence is under investigation or trial. shall not be permitted by the appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamil Nadu Police Sub-ordinate service (Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority.*

Explanation.—For the purpose of this clause, the expression ‘criminal misconduct’ shall have the same meaning as in Section 13 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988).”

8. In the light of the above, we conclude that the writ petitioner can be retained in service and not allowed to retire only so long as the reasons that led to the suspension and retention in service holds good and not thereafter. In this case, the writ petitioner was retained in service on account of his implication in Special Case No.56 of 2011 on the file of



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the Chief Judicial Magistrate, Madurai. Admittedly, the said case ended in acquittal on 31.08.2016. The authority did not chose to initiate any disciplinary proceeding against the writ petitioner before he reached the age of superannuation. If the judgment of acquittal rendered in favour of the writ petitioner had became final, the authority was obliged to have revoked the suspension as well as the subsequent order not allowing him to retire. If any appeal had been filed against the judgment of acquittal, that would have been a different matter altogether. In this case, admittedly, no appeal was filed against the judgment of acquittal dated 31.08.2016 in Special Case No.56 of 2011.

9.The learned senior counsel for the writ petitioner would also state that the representation dated 02.12.2019 was the final reminder before he filed W.P.(MD)No.1235 of 2020. The said representation is said to have been preceded by quite a few other earlier representations. If the authority had acted on the writ petitioner's representation in the year 2017 itself, obviously, the suspension order would have been revoked and he would have been permitted to retire with all benefits following his acquittal in the criminal case. Merely because the authority



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did not act on the writ petitioner's representation and delayed the matter, the subsequent implication of the writ petitioner in yet another vigilance case cannot be put against the writ petitioner. The authorities cannot be allowed to take advantage of their own wrong.

10.The very purpose of retaining a government servant in service is to visit him with the necessary consequences if he is found guilty in the enquiry or the criminal case which were pending on the date when he reached the age of superannuation. There cannot be any other object. The employee will be retained in service till the enquiry / criminal prosecution against him get concluded. The Tamil Nadu Government Servant's Conduct Rules, 1973 states that they apply to all persons appointed to civil services and posts in connection with the affairs of the State of Tamil Nadu whether on duty, leave or on foreign service. An employee who has crossed the age of superannuation and who has not been allowed to retire but retained in service for the reason that he is facing enquiry/criminal prosecution is not on duty or leave or on foreign service. The Conduct Rules will not apply to a person in such extended service.

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11.The government is given twelve weeks from the date of receipt of a copy of this order to settle the writ petitioner's retirement benefits.

This writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**(G.R.S. J.) & (K.R.S. J.)
23.07.2025**

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias/SKM

To:

- 1.The Principal Secretary to Government,
Highways and Minor Ports (HL 1) Department,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The Director General of Highways,
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and
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